IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

Crl.Rev.Pet.No. 3583 of 2006()

ST.1195/2004 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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REVN. PETITIONER: COMPLAINANT

BERNAD ALIAS K.G.BIJU,
S/O.GEORGE, MUTTUNGAL HOUSE,
MUNDENVELI P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.MANU ROY

RESPONDENTS: ACCUSED

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SMT.SHEELA SAIGAL,USHA NILAYAM,
THIRUMALA BAGAM P.O., THURAVOOR,
ALAPPUZHA DISTRICT.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

Crl. R.P. No. 3583 of 2006

Dated this the 20th day of November, 2006

ORDER

The petitioner filed a complaint before the court of the Judicial Magistrate of the First Class - I, Kochi under Section 138 of the Negotiable Instruments Act against the second respondent. It is submitted that the complaint was filed on 25.5.2004. The proceedings paper would show that it was posted for the first time on 30.12.2004 and it was being adjourned to 29.6.2005, 23.12.2005 and 12.6.2006. On 12.6.2006, the court below issued summons to the accused and directed the complainant to take steps on that day itself. The case was posted to 12.7.2006. On that day, on the ground that the complainant failed to take steps, the court below "discharged" the accused under Section 204(4) of the Code of Criminal Procedure.

2. It is stated in the Memorandum of Revision that the case was posted to 12.7.2006 for taking steps to issue summons to the accused and due to inadvertent omission on the part of the

Advocate Clerk the date was not noted. Consequently, there was no representation on 12.7.2006. The statement does not appear to be correct. Records reveal that on 12.6.2006 itself, there was a direction to pay the process.

3. However, taking note of the fact that the complaint was filed on 24.5.2004, and various postings were made not at the instance of the complainant, I am of the view that a breathing time can be granted to the complainant to cure the defect and that the complaint can be taken on file and the order impugned can be set aside granting a short time to the complainant to take necessary steps. Since the second respondent complainant was not served with summons, I do not think that it is necessary to issue notice to her in this Crl.R.P. Accordingly the order impugned is set aside .The petitioner shall appear before the court below on 11.12.2006 and shall pay the necessary process before 15.12.2006.

Crl. R.P. is allowed as above.

K.T.SANKARAN,
JUDGE

csl

M.F.A. No. 329/2002B

J.B.KOSHY&M.N.KRISHNAN,JJ

JUDGMENT
Dated this the 9th November, 2006